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TAN SRI DATO' NATHAN ELUMALAY v. NATARAJEN MANOHRAN

HIGH COURT MALAYA, KUALA LUMPUR
JOHN LEE KIEN HOW JC
[CIVIL SUIT NO: WA-23CY-60-11-2018]
B 11 SEPTEMBER 2022

Abstract – *Publication of statements in the WhatsApp group chat with substantial number of audience is capable of bearing defamatory meaning once it is proven to have been motivated by malice and such publication would severely tarnish the business reputation of the person defamed, more so, when the group chat consisted largely of his business friends.*

C

D ***TORT:*** *Defamation – Action for defamation – Claim for defamatory postings in WhatsApp group chat – Whether publication of defamatory words proven – Whether postings in chat group defamatory in nature – Whether ordinary reader would interpret words as veiled remark against person defamed – Whether allegations constituted baseless accusations – Whether defamation proven*

E ***TORT:*** *Defamation – Defences – Fair comment and justification – Claim for defamatory postings in WhatsApp group chat – Whether defence of justification established – Whether points raised were only insinuation – Whether facts on which comment formed were true – Whether postings remotely concerned matter of public interest – Whether defences could stand*

F The plaintiff filed a claim for damages against the defendant for a picture collage which consisted of a few WhatsApp ('WA') messages exchanged between them ('impugned posting'). The crux of the claim was that the impugned posting, created and posted by the defendant, was deemed to be defamatory of the plaintiff. The impugned posting was allegedly posted to G WA group called DG Chat Group, administered by SP1, who asserted that after the collage was received in the DG Chat Group, he had forwarded the impugned posting to another WA chat group named Politics & Public Debate Chat Group before deleting the impugned posting in the DG Chat Group.

Held (allowing plaintiff's claim):

H

(1) In any defamation action, a plaintiff will need to establish that: (i) the words were defamatory; (ii) the words referred to the plaintiff; and (iii) the words were published to third parties. In this case, the impugned posting was indeed referring to the plaintiff. (paras 10 & 11)

I **(2)** The impugned posting consisted of WA messages exchanged between the plaintiff and the defendant. There were also additional wordings. There was publication by the defendant when he posted the impugned posting to the DG Chat Group. Despite the defendant's denial that the

additional wordings were not written by him, he had never produced the alleged 'original' impugned postings without the additional wordings. Further, it is a feature in the WA that forwarded messaged could not be edited out by the person who forwards such message. Therefore, the impugned posting, with or without the additional wordings, was defamatory against the plaintiff and the publication of the impugned posting up to the posting in the DG Chat Group was indeed by the defendant. (paras 16, 17 & 19-23)

(3) The impugned posting would expose the plaintiff to hatred and ridicule, and it would certainly be capable of lowering the plaintiff reputation in the estimation of right-thinking society. In one of the WA exchange messages, the defendant queried whether the plaintiff had bribed someone concerning a civil suit. Any ordinary reader could interpret the words as a veiled remark that the plaintiff had bribed someone. Further, the additional wordings, in their natural and ordinary meaning, implied that the plaintiff was showing off his new car despite his failure to pay his sub-contractor. This was a very serious and grave suggestion made by the defendant as there was no decision in the civil suit that supported the purported failure by the plaintiff's company to pay the defendant's company. This, together with the bribery allegation and many other allegations, constituted baseless accusations and was therefore, defamatory. (paras 28, 31, 36 & 38)

(4) The defendant relied on two defences, fair comment and justification. However, other than the particulars in the pleadings, the defendant failed to provide any concrete evidence to support his defence of justification. The points listed in the defendant's amended statement of defence were only insinuations and allegations that had yet to be proven in the civil suit. Further, the failure of the defendant to either testify or to render any evidence on the suggestion of a 'bribe' by the plaintiff meant that there was no such evidence of any corrupt practice by the plaintiff. (paras 44 & 45)

(5) The defence of fair comment would fail if the defendant could not prove that the facts on which the comment was formed were true. The defendant could not prove and had not adduced any evidence to establish that the plaintiff had lied to his sub-contractor, bribed someone from the court to delay the civil suit and that the plaintiff had used the money to pay his sub-contractor for his own use. In fact, at the time the impugned posting was created and forwarded, the civil suit was still ongoing. Also, the impugned posting did not even remotely confer any matter of public interest. Accordingly, the defence of fair comment could not stand. (paras 56, 58 & 59)

(6) The gravity of the allegation posed by the defendant towards the plaintiff was severe especially his professional reputation. The impugned posting could be presumed to have reached a large audience because the DG

Chat Group had approximately 200 participants and consisted of the defendant's business friends. Hence, this was not a 'limited' publication. Having established his case on the balance of probabilities, the plaintiff was awarded, *inter alia*: (i) global damages of RM200,000 to be paid by the defendant to the plaintiff; and (ii) a full and unequivocal written public retraction and apology to be published by the defendant in the Star, in both its print and online editions, within 14 days from the date of judgment on terms to be approved by the plaintiff beforehand. (paras 68, 70, 71 & 73)

Case(s) referred to:

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***
Chua Jui Meng v. Hoo Kok Wing & Anor [2000] 6 CLJ 390 HC ***(refd)***
Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor [2018] 9 CLJ 285 CA ***(refd)***
Dato' Sri Mohd Najib Tun Hj Abdul Razak & Anor v. Mohd Rafizi Ramli & Another Appeal [2018] 4 CLJ 41 CA ***(refd)***
Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor [2018] 1 CLJ 145 FC ***(refd)***
Datuk Seri Anwar Ibrahim v. Wan Muhammad Azri Wan Deris [2015] 2 CLJ 557 HC ***(refd)***
Denis O'Brien, Plaintiff v. Mirror Group Newspapers Ltd, Piers Morgan, Neil Leslie and Karl Brophy, Defendants [2001] 1 IR 1 ***(refd)***
Dr Chong Eng Leong v. Tan Sri Harris Mohd Salleh [2017] 10 CLJ 657 CA ***(refd)***
Hasnul Abdul Hadi v. Bulat Mohamed & Anor [1977] 1 LNS 33 HC ***(refd)***
Henry Wong Jan Fook v. John Lee & Anor [1975] 1 LNS 57 FC ***(refd)***
JB Jeyaretnam v. Goh Chok Tong [1984] 1 LNS 139 ***(refd)***
John v. MGN Ltd [1997] QB 586 ***(refd)***
Jones v. Skelton [1963] 3 All ER 952 ***(refd)***
Lucas-Box v. Associated Newspapers Group Ltd [1986] 1 All ER 177 ***(refd)***
Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar [2001] 3 CLJ 65 CA ***(refd)***
MGG Pillai v. Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals [1995] 2 CLJ 912 CA ***(refd)***
Prem Anand Loganathan v. Dhinagaran Jayabalan [2016] 1 LNS 1562 HC ***(refd)***
Raveychandran Goonydo v. Datuk Abdul Kadir Jasin & Anor And Another Case [1997] 3 CLJ Supp 68 HC ***(refd)***
Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee [2015] 8 CLJ 477 FC ***(refd)***
Tan Sri David Chiu Tat-Cheong v. Seema Elizabeth Isoy [2021] 1 LNS 1162 HC ***(dist)***
The Institute Of Commercial Management United Kingdom v. The New Straits Times Press (Malaysia) Bhd [1993] 2 CLJ 365 HC ***(refd)***
Tun Datuk Patinggi Hj Abdul-Rahman Ya'Kub v. Bre Sdn Bhd & Ors [1995] 1 LNS 304 HC ***(refd)***
Turner v. Metro-Goldwyn Mayer Pictures Ltd [1950] 1 All ER 449 ***(refd)***
Wong Ling Biu v. Teng Ung Woo & Anor [2015] 1 LNS 1105 HC ***(refd)***
Wong Yoke Kong & Ors v. Azmi M Anshar & Ors [2003] 6 CLJ 559 HC ***(refd)***
Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min [2017] 1 LNS 1902 CA ***(refd)***

Legislation referred to:

Defamation Act 1957, ss. 8, 9
Rules of Court 2012, O. 78 r. 3(2)

For the plaintiff - Rueben Mathiavaranam & Angeline Tan; M/s Suflan TH Liew & Partners

For the defendant - Manoharan Malayalam & Dyna-Sri Samadass; M/s M Manoharan & Co

Reported by S Barathi

JUDGMENT

John Lee Kien How J:

Introduction

[1] The plaintiff in this case filed this claim ('this claim') for damages against the defendant for a picture collage which consists of a few WhatsApp messages exchange between him and the defendant ('the impugned posting').

Background Facts

[2] The plaintiff is the founder, Chairman and Group Managing Director of Eversden Group of Companies. Meanwhile, the defendant is the Managing Director and one of the shareholders of Linus Engineering Sdn Bhd. It is known that there was a civil suit ('the civil suit') initiated by Linsun Engineering Sdn Bhd against Shin Eversendai Engineering (M) Sdn Bhd, a subsidiary of Eversensai Group of Companies on the dispute of a non-payment under a subcontract entered by them.

[3] The crux of this claim is that the impugned posting created and posted by the defendant is deemed to be defamatory against the plaintiff. For ease of reference, the impugned posting is produced as follows:

[4] The impugned posting was allegedly posted to a WhatsApp group called DG chat group ('the DG chat group'. The DG chat group was administrated by one Dato' Gopinath a/l Supramaniam who was the plaintiff's first witness ('SP1'). SP1 asserted that after the collage was received in the DG chat group, he had forwarded the impugned posting to another WhatsApp chat group named 'politics & public debate' (the politics & public debate chat group') before deleting the impugned posting in the DG chat group.

[5] The plaintiff contended that the impugned posting was capable of being treated as defamatory against him. However, the defendant denied that the impugned posting was created by him and thus no publication was ever made.

[6] Unsatisfied with the defendant's response, the plaintiff filed this claim against the defendant. The plaintiff was seeking, in essence, damages from the defendant, a written public apology, and an injunction to prohibit the defendant from further authoring or publish any defamatory statement about the plaintiff.

The Trial

[7] The plaintiff called eight witnesses during the trial while the defendant called one witness, respectively.

SP1 Dato' Gopinanth Supramaniam
SP2 Datuk Phupatrai Mansukhlal Premji
SP3 Thirumaren Munisamy
SP4 Vijaya Kumaran Danapalan
SP5 Mahendran Gnasamoothy
SP6 Gavin Jay Anand Ail Jayapal
SP7 Tan Sri Dato' Nathan Ail Elumalay
SP8 Ganasan Arumugam
SD1 Dato' Natarajen Ali Manohran

Issues

[8] Before the commencement of the trial, the parties had agreed on the following issues to be tried:

(i) Whether the defendant had published or caused to be published the impugned posting referred to in para. 24 of the re-re-amended statement of claim ('the SOC').

(ii) Whether the impugned posting referred to in para. 24 of the SOC, is a publication of and concerning the plaintiff.

(iii) Whether the words complained of set-out in Annexure B of the SOC forming the impugned posting are capable of bearing the defamatory meaning(s) pleaded respectively under para. 29 of the SOC.

(iv) Whether the defendant is entitled to rely on the defence of justification? A

(v) Whether the defendant is entitled to rely on the defence of fair comment on a matter of public interest?

(vi) Whether in publishing the words complained of the defendant was motivated by express malice. B

(vii) Whether the plaintiff is entitled to the reliefs prayed for?

Decisions And Findings Of The Court

[9] After perusing the cause papers, the witnesses' statements, the notes of proceedings, the written and oral submissions, and the parties' replies, I allow the plaintiff's claim. Herein are my reasons. C

[10] It is trite in any defamation action that, a plaintiff will need to establish the following to succeed in his claim for defamation:

(i) that the words were defamatory;

(ii) that the words referred to the plaintiff; and D

(iii) that the words were published to third parties.

[11] In the current case, there is no dispute that the impugned posting was indeed referring to the plaintiff. Thus, I will only focus and discuss on the first and third elements accordingly. E

Whether The Impugned Posting Was Posted By The Defendant?

[12] It is a fundamental principle that in any defamation action the defamatory statement or words must be communicated or published to a third party in such a manner so as to be capable of conveying its defamatory meaning. As articulated by His Lordship Abang Iskandar JCA (now CJSS) in *Dr Chong Eng Leong v. Tan Sri Harris Mohd Salleh* [2017] 10 CLJ 657; [2017] 4 MLJ 611 at p. 669 (CLJ); p. 622 (MLJ) para. [33]: F

> The law on publication in the context of the tort of defamation is, in fact, clear. It is this. For there to be defamation, *there must first be established the factum of publication to at least a third party in respect of the impugned defamatory statement. A communication to the two parties, namely the speaker and the listener, can never amount to a defamation of the listener's reputation as there is no publication of the same to a third party. In the absence of a third party, no reputation can be in jeopardy of being tarnished. So, publication of the defamatory statement is an essential element to be established in the tort of defamation*. G H
>
> (emphasis added)

[13] The plaintiff submitted that there was such publication since the impugned posting was sent to the DG chat group by the defendant. This fact was testified by SP1 during cross-examination: I

> [NOP, Part A p. 18]
>
> MM C1, page 1. Is this the collage that you received? Is this the one?
>
> GOPI Yes, this is what came in my group,

MM Sorry, is this the one that you received in your –

GOPI Group, yes.

[14] SP2 during cross-examination also narrated that he received the impugned posting through the DG chat group:

[NOP, Part A p. 90]

MM	Yes. Question is doing you receive this on your phone?
PHUPHAT	My, the WhatsApp group, DG WhatsApp group, yes.
MM	Do you have evidence to show that you received this?
PHUPHAT	No, I don't have that particular sort of messages because every few days I delete because there's so many messages every day.
MM	So, am I right to say that you don't have –
PHUPHAT	No, I don't have.
...	
MM	Not there. So, you can't really confirm this is the exact, look at, this is the exact collage, you call this collage, allegation is the collage. This is the exact thing that you received.
PHUPAT	No, I can confirm this was what I received, I can confirm that.

[15] Despite the above testimony, the defendant submitted that there was no actual evidence to support that he was the one who published the impugned posting to the DG chat group. However, according to his own admission, he did post the impugned posting into a WhatsApp group. The defendant during cross-examination said this: [NOP, Part C p. 31]

RM	Kamu telah mereka cipta kolaj WhatsApp ini.
NATARAJ	Ya
RM	Kamu kemudiannya telah memasukkannya dalam WhatsApp chat group.
NATARAJ	Ok
RM	Apakah sebab kamu membuat demikian?
NATARAJ	Untuk orang umum tahu mengenai Plaintif lah.
RM	Oh, untuk membagitahu orang umum tahu mengenai Plaintif?
NATARAJ	Ya.

[16] In the present case, the impugned posting consists of WhatsApp messages exchange between the plaintiff and the defendant. There were also additional wordings mentioning that Tak Boleh Bayar Hutang Subcon Ttp Tunjuk Wayang Beli Kereta Baru!! Hoi Bayar Subcon La!!' and 'Tan Sri Dato' AK Nanthan Eversendai Group' ('the additional wordings') written in red on the impugned posting.

[17] The circumstance here is a bit peculiar. This is because the impugned posting was allegedly posted to the DG chat group but later deleted by SP1. But, before he deleted it, he forwarded the impugned posting to another WhatsApp group *ie*, the politics & public debate chat group. It is my finding that there was a publication by the defendant when he posted the impugned posting to the DG chat group. This court note that during trial and in his admission, the defendant only mentioned a WhatsApp messaging group in general and that this WhatsApp group consisted of the defendant's business friends. However, it is safe to surmise that the WhatsApp group is the DG chat group. While arguing in para. 17.4 of the defendant's amended statement of defence that the alleged impugned posting posted in the politics & public debate chat group was different from the one that he had posted in the earlier WhatsApp chat group, the defendant only denied writing the additional wordings in the impugned posting. In view that in para. 17.3 of the defendant's amended statement of defence he referred to para. 24(a) of the SOC, which mentioned the 'DG chat group', it is safe and clear that the WhatsApp messaging group he mentioned is indeed the 'DG chat group'. This was also never denied by the defendant in para. 17.3 of the defendant's amended statement of defence.

[18] Paragraphs 17.2, 17.3 and 17.4 of the defendant's amended statement of defence say:

> 17.2 Defendan menyatakan bahawa Defendan telah membuat kolaj gambar dengan hanya menggunakan Bahasa Mesej WhatsApp di antara Plaintif dan Defendan seperti di Perenggan 21 Pernyataan Tuntutan dan gambar Plaintif bersama dengan sebuah kereta. Defendan telah memperoleh gambar tersebut daripada sumber laman webwww.optionstheedge.com/topic/machines/mercedes-benz-special-s-success-tan-sri-datuk-ak-nathan dan bukannya rekaan Defendan di mana gambar dan maklumat mengenai pembelian kereta tersebut oleh Plaintif telah disiarkan kepada masyarakat umum melalui laman web tersebut. Defendan telah meletakkan dan/atau menghantar kolaj gambar yang mengandungi balasan mesej WhatsApp beserta gambar Plaintif bersama kereta tersebut kepada satu kumpulan WhatsApp (WhatsApp Group) yang mana ahli-ahli kumpulan tersebut adalah hanya terdiri daripada rakan-rakan perniagaan Defendan.
>
> 17.3 Defendan menyatakan bahawa kolaj gambar tersebut yang dibuat dan dihantar oleh Defendan di dalam kumpulan WhatsApp tersebut tidak mengandungi apa-apa kenyataan fitnah dan/atau libel seperti yang diplidkan oleh Plaintif di dalam Perenggan 24(a) Pernyataan Tuntutan Terpinda Semua tersebut. Defendan menafikan dakwaan Plaintif dan menyatakan bahawa Defendan tidak mempunyai pengetahuan dan tidak meletakkan dan/atau menulis ayat "Tidak Boleh Bayar Hutang Subcon Ttp Tunjuk Wayang Beli Kereta Baru!! Hoi, Bayar Subcon La!!" di dalam kolaj gambar yang dihantar di dalam Kumpulan WhatsApp.

17.4 Defendan sesungguhnya memplidkan bahawa kolaj gambar yang dilampirkan oleh Plaintif di dalam Lampiran A, Pernyataan Tuntutan Terpinda tersebut adalah bukan kolaj gambar asal yang dihantar oleh Defendan.

[19] As mentioned previously, the defendant contended that the additional wordings were not written by him, but the rest of the collage was his creation. Hence, the impugned posting forwarded by SP1 was not his. Despite his denial, he has never produced the alleged 'original' impugned posting without the additional wordings.

[20] On this issue, I agree with the plaintiff's submission that it is a feature in WhatsApp that forwarded messages cannot be edited out by the person who forwards such message. SP1 as the DG chat group administrator has confirmed that the impugned posting was received by him and immediately forwarded by him to the politics and public debate chat group. While SP1 is no more having in his phone memory the original posting in the DG chat group, he has shown to this court the original of the impugned posting (in the politics and public debate chat group) in his phone during his testimony which clearly showed that the impugned posting (with the collage carrying the additional wordings in it) is indeed as forwarded. I find this undisputable. The same was also corroborated by SP2. I find both of these witnesses reliable and that the evidence is sound despite the absence of the original posting. The burden then shifts to the defendant to deny this. He could do so by producing his original collage or the original of his posting. He has not done so. Instead, he admits that the impugned posting minus the additional wordings is his creation. The safe conclusion here is that the impugned posting is indeed as per the posting of the defendant to the DG chat group.

[21] It is to be noted that, as will be discussed shortly after this, it is my finding that the impugned posting, with or without the additional wordings, is defamatory against the plaintiff.

[22] Nonetheless, I agree with the defendant that there is no evidence to say he had posted the impugned posting to the other WhatsApp group *ie*, the politics and public debate chat group. Indeed, SP1 had admitted this in his testimony that he had forwarded the impugned posting to the politics & public debate chat group. Therefore, in my view, the publication made by the defendant only with respect to the DG chat group. Any publication after that by SP1 was the republication by SP1 and not the defendant.

[23] Thus, in answering this key issue, the publication of the impugned posting up to the posting in DG chat group is indeed by the defendant.

Whether The Impugned Posting Is Defamatory

[24] For the impugned posting to be defamatory, the plaintiff must prove that the impugned posting tends to lower the plaintiff in the estimation of right-thinking members of society. (see *Jones v. Skelton* [1963] 3 All ER 952;

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461; [1999] 1 MLJ 371; *Datuk Seri Anwar Ibrahim v. Wan Muhammad Azri Wan Deris* [2015] 2 CLJ 557; [2014] 9 MLJ 605).

[25] Further, in *Wong Yoke Kong & Ors v. Azmi M Anshar & Ors* [2003] 6 CLJ 559; [2003] 4 MLJ 96 it was held that the court must firstly, consider the meaning that the words could convey to the ordinary person and secondly, ascertain that if the words were published, a reasonable person and would likely understand them in a defamatory sense.

[26] Therefore, the key question to be answered in this case is: what would an ordinary reasonable reader construe the impugned posting to mean? Would the impugned posting expose the plaintiff to hatred, ridicule, and detestation in the mind of a reasonable reader or would it tend to lower the plaintiff in the estimation of right-thinking society generally? To explore this, the WhatsApp messages exchange must be analysed. The WhatsApp messages exchange between the parties (as they appear in the impugned posting), and the timing are as stated in the table below:

The text messages by the Defendant	The replies of the messages by the Plaintiff
1345: Hi Tan Sir, gd day. I still remember Tan Sri Told us that Rohan is handling our pending case in high court. I believe definitely you will engage someone to handle this matter. I trust we don't start from scratch again. We already spend almost 4 years now. Take care Tan Sri.	1528: It would take a few more years to settled the matter. You should have accepted what we offered to close the matter. End of the day we are only going to make lawyers make their money to be happy. Regards.
1614: Tan Sri, it doesn't matter how many years this matter will take but we are just being careful on your next tactic by giving reason that Rohan is no more. Only ur lawyer is making money out of this case, not our lawyer. Our lawyer getting screws from coz of the postponement n etc. We just end up this matter legally. Regards.	1629: This is what you call arrogance. Let the matter be settled legally and hereafter do not message me any more.
1632: Yes, it might be arrogance for u but it's just our notification u and our assumption what you will do next. You yourself can judge that this case would take a few more years to settle means have you already bribe someone to drag this case in the court? In same case you also don't message us for settlement. Let it move as it is. Tq.	

2319: http://www.optionstheedge.com/topic/machines/Mercedes-benz-special-s-success-x-tan-sri-datuk-ak-nanthan Despite a punishing schedule that sees him criss-crossing the globe almost weekly, AK, a great car enthusiast, recently took some rare time off to put the new Mercedes-Mayback S 560 through its paces. "As someone who works constantly, the first thing I noticed was the wireless charges. I had brought my charged along, knowing I would be travelling quite a distance from Damansara Heights to Bukit Rotan in Kuala Selangor, but I didn't need it at all. For businesspeople, this new function is fantastic!" Great Tan Sri but a normal car charger will cost u abt RM20 only. The best one also not more than RM50 but you spent RM1.4 million to get wireless charges. (4 images)	0004: Thats your low level of mentality and that the difference between us!
0725: Yes, may be but your level mentality is very high where you can use Subcon's money to increase ur human capital n after problem arise then will call them and negotiate for lower amount make yourself safe. Come on la. Since I'm knowing you your are doing the same. Your are not carrying good karma with you.	0740: I do not cheat people and live on others people money
0740: Hahahaha... u stand in front of a mirror and say that. 1st of all let's see whether the mirror will believe u or not	

[27] The defendant argued that the plaintiff had never proven to this court that the impugned posting had lowered the plaintiff's reputation in the estimation of right-thinking members of society and exposed the plaintiff to hatred, contempt, or ridicule. With due respect, I disagree with the defendant's contention.

[28] Firstly, from my reading of the impugned posting, I agree that it would expose the plaintiff to hatred and ridicule, and it would certainly be capable of lowering the plaintiff's reputation in the estimation of right-thinking

society. In the Court of Appeal of *Yokomasu Marketing Sdn Bhd & Anor v. Chor Tse Min* [2017] 1 LNS 1902; [2018] 2 MLJ 654 it was held at para. [25] by His Lordship Asmabi Mohamad JCA:

> In order to ascertain if the words complained of are defamatory of the plaintiff, one has to examine *if the words complained of in their natural and ordinary meaning "impute to the plaintiff any dishonourable or discreditable conduct or motives or a lack of integrity on his part." If the answer is the affirmative, the words complained of is defamatory*.
>
> (emphasis added)

[29] This is because, looking at the impugned posting (even without the additional wordings) as a whole, it is clear that the use of words by the defendant in his messages were defamatory. The plaintiff premised that the context of the defendant's messages was as follows:

(i) the plaintiff cannot be trusted and is dishonest;

(ii) the plaintiff is foolish for spending RM1.4 million to purchase a wireless charger when he purchased the Mercedes-Maybach car;

(iii) the plaintiff had cheated his sub-contractor and other sub-contractors and is in the habit of doing so;

(iv) the plaintiff utilised monies that were meant to pay his sub-contractor for the purposes of enriching himself;

(v) the plaintiff had deliberately used monies meant for paying his sub-contractor to purchase a Mercedes-Benz-Maybach car but not pay his sub-contractor;

(vi) the plaintiff shows off when he purchased a new Mercedes-Maybach car but is unable to pay his sub-contractor;

(vii) the plaintiff would deliberately refuse to pay his sub-contractors and would then force them into accepting lower sums of money as payment;

(viii) the plaintiff lacks integrity, is calculative, manipulative, scheming and insincere; and

(ix) the plaintiff is unethical, unprincipled, and immoral in his conduct and is untruthful, untrustworthy and is a liar.

[30] Most notably, in one of the WhatsApp messages exchange, the defendant stated as follows:

> ... You yourself can judge that this case would take a few more years to **settle means have you already bribe someone to drag this case in the court**?
>
> (emphasis added)

[31] In this message, the defendant queried whether the plaintiff had bribed someone concerning the civil suit. Learned counsel of the defendant contended that the above statement was to reply to the plaintiff's previous message. Be that as it may, I find that any ordinary reader can interpret that as a veiled remark that the plaintiff had bribed someone. This is a very serious and grave suggestion made by the defendant.

[32] The plaintiff cited the case of *Wong Ling Biu v. Teng Ung Woo & Anor* [2015] 1 LNS 1105 where Lee Heng Cheong J held as follows:

> 17. A perusal of above paragraph revealed that the sting of the libel is "bribery" and the words complained of, carry a clear imputation of dishonesty or corruption ...
>
> 19. It is immaterial and irrelevant what the publisher intended the words complained of to mean and what the readers understood the words complained of to mean for the purpose of deciding the ordinary and natural meaning of the words complained of. There is no necessity for a plaintiff to prove the falsity of the words complained of once they are found to be defamatory of the plaintiff, because falsity is presumed by law.
>
> 20. This Court finds that the words complained of in the present case, carry the strong imputation that the plaintiff was dishonest or was guilty of committing corrupt practice of bribery in the election, which was a criminal act.

[33] While admitting to the WhatsApp messages exchange, the defendant denied that the additional wordings were ever written by him. SD1, namely the defendant himself, in his witness statement said this:

> [SD1's Witness Statement, Q17]
>
> S: Adakah kamu telah mereka dan menyebarkan suatu kolaj gambar Balasan Mesej WhatsApp di antara anda dengan Plaintif tersebut??
>
> J: *Saya telah satu membuat satu kolaj gambar dengan hanya menggunakan Bahasa Mesej WhatsApp di antara Plaintif dan saya, dengan gambar Plaintif bersama dengan sebuah kereta*. Saya telah memperoleh gambar tersebut daripada sumber lamanweb www.optionstheedge.com/topic/machines/mercedes-benz-special-s-succes-tan-sri-datuk-ak-nathan dan bukannya rekaan saya di mana gambar dan maklumat mengenai pembelian kereta tersebut oleh Plaintif telah disiarkan kepada masyarakat umum melalui laman web tersebut.
>
> *Saya telah meletakkan dan/atau menghantar kolaj gambar yang hanya mengandungi balasan mesej WhatsApp berserta gambar Plaintif bersama kereta tersebut kepada satu kumpulan WhatsApp (WhatsApp Group) yang mana ahli-ahli kumpulan tersebut adalah hanya terdiri daripada rakan-rakan perniagaan saya*.
>
> (emphasis added)

[34] SD1 also tried to be indifferent regarding this while answering the question posed by learned counsel of the plaintiff during his cross-examination:

[NOP, Part C pp. 28 - 29]

RM	Ya lah, encik tak dengar soalan saya. Soalan saya adalah, adakah encik membuat satu kolaj gambar menggunakan perkataan-perkataan dalam pertukaran dalam WhatsApp text exchange tadi yang saya rujuk, encik kata tak buat.
NATARAJ	Satu kolaj gambar, tapi bukan gambar ini.
RM	Gambar mana? Mana saya ada, saya tak rujuk encik kepada gambar-gambar pun. Saya Cuma menyatakan adakah encik membuat satu kolaj gambar -
NATARAJ	Ok.
RM	Menggunakan pertukaran WhatsApp di antara kamu dengan plaintiff?
NATARAJ	Ya.
RM	Ada buat?
NATARAJ	Ada buat, tapi, tapi bukan yang saya tengok dalam apa tu, tak ada lah.

[NOP, Part C pp. 32 - 33]

RM	Ok. So, kalau saya, menurut keterangan Dato', Dato' berkata perkataan-perkataan yang berwarna merah di bahagian bawah ini, Dato' tak masukkan lah.
NATARAJ	Tak.
RM	Ok. Selain dari itu, memang betullah, Dato' yang buat.
NATARAJ	Ya kolaj ini.
RM	Tapi yang merah ini, Dato' tak masukkan.
NATARAJ	Bukan kolaj ini, ada yang, gambar, gambar kereta pun macam saya tak pernah masukkan. Saya hanya masukkan yang ini sajalah.
RM	So, gambar kereta tak, tak masukkan?
NATARAJ	Tak, tak pasti.
RM	Mana tak pasti? (00:52:41 inaudible) dimasukkan atau tak dimasukkan?
NATARAJ	Kolaj ini betul. Tapi, tapi kolaj ini dieditkan oleh pihak ketiga, tak tahu siapa. Yang tulisan merah ini, bukan saya buat.

[35] I shall discuss the impugned posting in two separate versions: with and without the additional wordings. The impugned posting (without the additional wordings), among others, refers to the civil suit commenced by the defendant's company against the plaintiff's company. At the time of the trial of this claim, the civil suit in Shah Alam High Court was still ongoing. This is acknowledged by SD1 during cross-examination NOP, Part C pp. 21 to 22.

[36] The additional wordings in their natural and ordinary meanings imply that the plaintiff is showing off his new car *ie*, Mercedes-Benz-Maybach car, despite his failure to pay his sub-contractor. As mentioned earlier, there is no decision yet in the civil suit to support the purported failure of the plaintiff's company to pay the defendant's company. Surely, this, together with the bribery allegation and many other allegations constitute baseless accusations. Hence the plaintiff premised that the impugned posting in its natural and ordinary meaning is capable of being defamatory. To this I agree.

[37] The defendant has disputed as to the authorship of these additional wordings but admitted that the rest were indeed the collage made by him and sent by him to a WhatsApp messaging group. Even if I were to disregard the additional wordings and take the defendant's own admission with regard to the publication of the WhatsApp exchange messages by way of him putting such a collage in a WhatsApp messaging group, I still find that publication as such bears a defamatory tendency against the plaintiff. As discussed previously, one of the messages written by the defendant accused the plaintiff of bribing someone to delay the civil suit between the parties further. As articulated by Ian HC Chin J in *Raveychandran Goonydo v. Datuk Abdul Kadir Jasin & Anor And Another Case* [1997] 3 CLJ Supp 68 accusing the plaintiff of trying to bribe would be to say that he is despicable, dishonest, and immoral. In *Jones v. Skelton* [1963] 3 All ER 952, the Privy Council had overruled the decision of the full court of the Supreme Court of New South Wales and held that the words conveying the meaning that the plaintiff had influenced his colleagues by bribery were capable of bearing a meaning defamatory to the plaintiff. Also, in the English Supreme Court case of *Denis O'Brien, Plaintiff v. Mirror Group Newspapers Ltd, Piers Morgan, Neil Leslie And Karl Brophy, Defendants* [2001] 1 IR 1, the first defendant published an article which referred to an allegation that the plaintiff had made a donation to a certain politician and to controversy surrounding the award of a mobile telephone licence to a company of which the plaintiff was chairman. Keane CJ affirmed the earlier finding that the article published by the defendant has defamatory imputations.

[38] Hence, I agree with the plaintiff's submission that despite the absence of the additional wordings, the publication of the messages exchange between the plaintiff and the defendant remains defamatory.

[39] With that, I find that the defamatory claim against the defendant is indeed proven. Now, I will discuss on the defences raised by the defendant.

Defence of Justification And/Or Fair Comment

[40] It is provided under O. 78 r. 3 of the Rules of Court 2012 that for the defendant to raise the defence of justification and fair comment, he needs to specifically plead such defence. Order 78 r. 3 is as mentioned below:

> **Obligations to give particulars (O. 78 r. 3)**
>
> 3. (1) ...
>
> (2) Where in an action for libel or slander the defendant alleges that, in so far as the words complained of consist of statements of fact, they are true in substance and in fact, and in so far as they consist of expressions of opinion, they are fair comment on a matter of public interest, or pleads to the like effect, he must give particulars stating which of the words complained of the alleges are statements of fact and of the facts and matters he relies on his support of the allegation that the words are true.
>
> (3) Where in an action for libel or slander the plaintiff alleges that the defendant maliciously published the words or matters complained of, he need not in his statement of claim give particulars of the facts on which he relies in support of the allegation of malice, but if the defendant pleads that any of those words or matters are fair comment on a matter of public interest or were published upon a privileged occasion and the plaintiff intends to allege that the defendant was actuated by express malice, he must serve a reply given particulars of facts and matters from which the malice is to be inferred.

[41] The defence of justification is also specified in s. 8 of Defamation Act 1957:

> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fair by reason only that the truth of every charge is not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.

[42] This court accordingly refer to the Federal Court case of *Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee* [2015] 8 CLJ 477; [2015] 6 MLJ 187 where it laid down that the burden is on the defendant to show that the defamatory imputations are substantially true. His Lordship Azahar Mohamed FCJ (now CJM) also referred to the English Court of Appeal of case *Lucas-Box v. Associated Newspapers Group Ltd* [1986] 1 All ER 177 and summarised that (at pp. 498 (CLJ); p. 209 (MLJ):

> [51] In substance, the *Lucas-Box* plea of justification as decided by the English Court of Appeal is as follows:

A (a) If a plaintiff, in its defamation pleadings, gives a natural and ordinary meaning to the impugned words, the defendant may then rely on stating in his defence what he alleged was the natural and ordinary meaning of the words complained of; and

(b) A defendant in defamation proceedings who wishes to rely on a
B plea of justification must make clear in the particulars of justification the case which he is seeking to set up and must accordingly state clearly and explicitly the meaning which he seeks to justify.

[43] Likewise, in *Tun Datuk Patinggi Hj Abdul-Rahman Ya'Kub v. Bre Sdn Bhd & Ors* [1995] 1 LNS 304; [1996] 1 MLJ 393 His Lordship Richard
C Malanjum J (as he then was) explained the defence of justification (at p. 404):

> In a defamation action, the defence of justification is a complete defence if it succeeds. And the question of malice or bad faith does not arise. *But in order to succeed in the defence of justification a defendant must establish the truth of all the material statements in the words complained of which may include defamatory comments made therein*. And in order to justify such comments,
> D it is *necessary to show that the comments are the correct imputations or conclusions to be drawn from the proved facts*. However, the plea of *justification does not fail 'by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges'* (see s 8 of the Defamation Act 1957 and *Abdul*
> E *Rahman Talib v. Seenivasagam & Anor* [1966] 2 MLJ 66). *It is also to be noted that partial justification may be useful in the mitigation of damages.*
>
> Of course, the standard of proof required is on the balance of probabilities, and the burden of establishing the defence of justification is on a defendant.
>
> F There is no burden on a plaintiff to prove that a defamatory statement is false. The law presumes that the defamatory words are false.
>
> (emphasis added)

[44] In the defendant's amended statement of defence, he relied on two defences: fair comment and justification. He submitted that the impugned
G posting, which consists of the conversation between the defendant and the plaintiff was justified and true because it was based on the civil suit. The defendant, in the defendant's amended statement of defence, listed the particulars of justification as follow:

H **Butiran Pembelaan Justifikasi**

(a) Defendan mengulangi kesuluruhan butiran dan kesuluruhan perenggan-perenggan di dalam Pembelaan Terpinda Semua yang di atas ini.

(b) Bahawa Plaintif telah menipu subkontraktor yang telah menjalankan
I kerja untuk syarikat Plaintif;

(c) Bahawa Plaintif menggunakan wang yang harus dibayar kepada subkontraktor untuk kegunaan sendiri khusunya untuk memperkayakan dirinya;

(d) Sekiranya perlu Defendan akan bergantung kepada Seksyen 8 Akta Fitnah, 1957

[45] Here, the plaintiff argued, and I agree, that other than the particulars in the pleadings, the defendant failed to provide any concrete evidence to support his defence of justification. All three points (a), (b) and (c) listed in the defendant's amended statement of defence are only insinuation and allegation that has yet to be proven in the civil suit. Furthermore, the failure of the defendant to either testify or to render any evidence on the suggestion of a 'bribe' by the plaintiff meant there was no such evidence of any corrupt practice by the plaintiff. How could there ever be justification to such baseless allegation?

[46] I refer to another High Court case of *Prem Anand Loganathan v. Dhinagaran Jayabalan* [2016] 1 LNS 1562; [2016] MLJU 1149 where it was held that it is insufficient for the defendant in reliance of the defence of justification to merely establish that he received the information from a businesswoman that the plaintiff had sought and obtained a bribe from her and in addition thereto received a related VCF from her. The defendant has to go on further to establish that it was true that the plaintiff indeed sought and obtained a bribe from that businesswoman.

[47] In a similar vein, the defendant has failed to establish anything to prove the serious allegation of bribe in this case. Thus, there is nothing justifying such defamatory remark.

[48] The same goes to the alleged defence of fair comment. I do not find the defendant having any basis or ground to raise this defence. The defendant alleged that the impugned posting was to bring awareness of the plaintiff's action in respect of the civil suit. Again, with due respect, I disagree.

[49] Unlike justification, the defence of fair comment concerns the protection of comments rather than facts. However, such comments are only available based on facts proven to be true. As highlighted by Lim Beng Choon J in *The Institute Of Commercial Management United Kingdom v. The New Straits Times Press (Malaysia) Bhd* [1993] 2 CLJ 365; [1993] 1 MLJ 408, where the ration Lord Porter in *Turner v. Metro-Goldwyn Mayer Pictures Ltd* [1950] 1 All ER 449 was quoted: 'if the communication were a statement of facts and the facts were untrue, a plea of fair comment would not avail.'

[50] The defence of fair comment is also stated in s. 9 of the Defamation Act 1957:

> In an action of libel or slander in respect of word consisting partly of allegation of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation

of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

[51] In the Court of Appeal case of *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor* [2018] 9 CLJ 285; [2018] 3 MLJ 726 where His Lordship Abang Iskandar JCA (as he then was) at p. 307 (CLJ); pp. 745 to 746 (MLJ):

> [58] As for fair comment, the law on the defence of fair comment amounts to this. *If a defendant can prove that the defamatory statement is an expression of opinion on a matter of public interest and not a statement of fact, he or she can rely on the defence of fair comment*. The courts have said that whenever a matter is such as to affect people at large, so that they may be legitimately interested in, or concerned at, what is going on or what may happen to them or to others, then it is a matter a public interest on which everyone is entitled to make fair comment. *It is also a requirement that the comment must be based on true facts which are either contained in the publication or are sufficiently referred to. It is for the defendant to prove that the underlying facts are true. If he or she is unable to do so, then the defence will fail. As with justification, the defendant does not have to prove the truth of every fact provided the comment was fair in relation to those facts which are proved*. However, 'fair' in this context, does not mean reasonable, but rather, it signifies the absence of malice. The views expressed can be exaggerated, obstinate or prejudiced, provided they are honestly held (see, the case of *Dato Seri Mohammad Nizar bin Jamaluddin v. Sistem Televisyen Malaysia Bhd & Anor* [2014] 4 MLJ 242; [2014] 3 CLJ 560).
>
> (emphasis added)

[52] In *JB Jeyaretnam v. Goh Chok Tong* [1984] 1 LNS 139; [1985] 1 MLJ 334 at 338, LP Thean J held that the party relying on the defence of fair comment must establish the following elements:

(i) the words complained of are comment, although they may consist of or include inferences of fact;

(ii) the comment is on a matter of public interest;

(iii) the comment is based on fact; and

(iv) the comment is one which a fair-minded person can honestly make on the facts proved

[53] The defendant, in his defence, further averred in para. 35 that:

Butiran Pembelaan Komen Berpatutan

(i) Defendan bersandarkan kepada pembelaan berpatutan "fair comment" dari segi isi dan fakta di bawah Seksyen 9 Akta Fitnah 1957

(ii) Defendan mengulangi perenggan 1 hingga 30 pernyataan Pembelaan Terpinda Semua yang di atas ini.

[54] Here, the defendant contended that the impugned posting is a matter of public interest to ensure that the public knows the plaintiff's action in the civil suit. Besides, there is nothing much on this defence raised by the defendant. Similar with the defence of justification, I do not find any reason why the defence of fair comment should be allowed. How could a veiled remark about plaintiff bribing the court staff be accepted under the fair comment defence without any proof evidencing the same? Such bare and irresponsible allegation and remark cannot be accepted as fair comment without proof otherwise this will definitely open the floodgate of any shameless attack on any litigants in general and on the judicial system of the country in particular.

[55] The plaintiff also contended that the defendant had failed to make any particularisation on which comment or opinion he referred to as required under O. 78 r. 3(2) of the Rules of Court 2012. The plaintiff further cited the Court of Appeal case of *Dato' Sri Mohd Najib Tun Hj Abdul Razak & Anor v. Mohd Rafizi Ramli & Another Appeal* [2018] 4 CLJ 41; [2018] 1 MLJ 295 where Her Ladyship Rohana Yusuf JCA (now PCA) held as follows:

> [21] Of course when a comment is based upon facts, it cannot be on the facts invented by the maker himself. It must rest upon facts which are presumed to be true. If the fact never exists, then the defence must fail. *In line with this requirement, O. 78 r. 3(2) provides for the procedural requisite for particularisation of the facts relied upon in support of any comment or opinion. The defendants here are duty bound to particularise what are the facts relied upon in order to support that the allegations made are their true beliefs or opinions, and not to leave to the plaintiffs and finally the court to speculate, pick and choose for them.*
>
> (emphasis added)

[56] Adding to the defendant's failure, as previously discussed, the impugned posting was merely allegations and suggestions without any evidence or corroboration to support his statement. It is trite that the defence of fair comment will fail if the defendant cannot prove that the facts on which the comment is formed are true (see *Hasnul Abdul Hadi v. Bulat Mohamed & Anor* [1977] 1 LNS 33*;* [1978] 1 MLJ 75).

[57] In *Chua Jui Meng v. Hoo Kok Wing & Anor* [2000] 6 CLJ 390; [2000] 3 MLJ 1, the High Court dismissed the defendant's defence of fair comment and held that (at p. 403 (CLJ); p. 14 (MLJ)):

> Thus, the first issue is whether the allegations made by the first defendant were comments upon facts or whether they were allegations of fact. In *Chok Foo Choo @ Chok Kee Lian v. The China Press Bhd* [1999] 1 MLJ 371, the Court of Appeal said at p. 376 as follows:

A It is an elementary principle of the law of defamation that for fair comment to succeed the facts upon which comment is made must be true, or if untrue, must have been published on a privileged occasion.

It is therefore clear from the circumstances of this case that none of the first defendant's impugned allegations against the plaintiff have been proven to be a fact. The first defendant led no evidence to prove as fact, any element of the impugned allegations that he made. In the circumstances, I am satisfied that the defence of fair comment must necessarily and that therefore the question of public interest does not arise …

(emphasis added)

C **[58]** In the same vein, in the present case, the defendant cannot prove and had not adduce any evidence to establish that the plaintiff had lied to his sub-contractor, bribed someone from the court staff to delay the civil suit and that the plaintiff had used the money to pay his sub-contractor for his own use. Not to mention that at the time the impugned posting was created and D forwarded, the civil suit was still on-going. Accordingly, the defence of fair comment cannot stand.

[59] I further find that the impugned posting does not even remotely confer any matter of public interest. I refer to Federal Court case of *Henry Wong Jan Fook v. John Lee & Anor* [1975] 1 LNS 57; [1976] 1 MLJ 231 where it E was held by His Lordship Suffian LP that the defence of fair comment cannot be on any matter but must be on some matter of public interest.

[60] As alluded previously, the civil suit is still pending when this claim is heard. Thus, the impugned posting is still mere speculation and allegation without basis. Looking at the WhatsApp messages exchange in the impugned F posting, I understand the defendant's frustration. However, he should be more responsible for anything he posted or made or, in this case, sent to WhatsApp groups. I share my sentiment with Kamalanathan Ratnam J in *Chua Jui Meng* (*supra*) where he dismissed the defendant's defence of fair comment and said, 'It can never be in the public interest for scurrilous G untruths to be irresponsibly and wantonly thrown against the plaintiff.' Consequently, the defendant is digging his own grave by creating the impugned posting and uploading it on the DG chat group.

[61] Thus, based on the above authorities and discussion, it is my finding that both defence of justification and fair comment cannot stand.

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Damages

[62] Having dismissed the defences raised by the defendant, the remaining question is with regard to the quantum of damages that the plaintiff is entitled to due to the picture collage. I find great guidance from the Court of Appeal I case of *Mahadevi Nadchatiram v. Thiruchelvasegaram Manickavasegar* [2001] 3 CLJ 65 where His Lordship Haidar Mohd Noor JCA (as he then was) held (at p. 96) that in considering an award for damages for defamation the

established factors set out by the Court of Appeal in *MGG Pillai v. Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals* [1995] 2 CLJ 912 should be observed, namely:

1. The position and standing of the plaintiff;
2. The extent of the publication;
3. The mental distress, hurt, anxiety and mental anguish caused to the plaintiff as a result of the libel;
4. The uncertainty undergone in the litigation;
5. The conduct of the defendant from the time of the libel down to the very moment of the verdict;
6. The absence and refusal of correction, retraction, or apology

[63] Likewise, in the recent Federal Court decision in *Datuk Harris Mohd Salleh v. Datuk Yong Teck Lee & Anor* [2018] 1 CLJ 145 it was decided (at p. 213):

> [82] In the present appeal, the learned trial judge had considered the *seriousness of the libel, the extent of the publication, the plaintiff's reputation and the adverse effect of the defamatory statements on his dignity and reputation, and the conduct of the defendants including absence of remorse for defaming the plaintiff and in urging the court not to award any damages or costs to the plaintiff, all of which the learned trial judge was entitled to take into account in assessing damages*. Then, there is the award in *MGG Pillai*'s case which we have to put into the scale to consider the award made by the learned trial judge. Whilst we are not prepared to share the Court of Appeal's view that the learned trial judge had not been influenced by the award in *MGG Pillai*, he would have awarded the global sum of RM1 million to the plaintiff for compensatory, aggravated, and exemplary damages. This, in our view, warrants appellate interference.
>
> (emphasis added)

[64] The plaintiff, in his witness statement, had listed out numerous positions that he has held under the Eversendai Group of Companies which have businesses internationally. The most notable position would be that he is the founder, Chairman and the Group Managing Director of the said group of companies which has its footings worldwide. He has also been awarded 'the Darjah Kebesaran Panglima Setia Mahkota (P.S.M) which entitles him to carry the honourable title of a "Tan Sri". He was interviewed in numerous mainstream media and social media. Thus, I would conclude that the plaintiff is indeed a reputable and respectable man in the society especially in his professional and business circles and markets.

[65] The defendant then raised a point that no evidence has been adduced to suggest saying that the plaintiff's reputation had taken a hit because of the impugned posting. Here, again, I disagree. Defamation law is trite that one

man's reputation is always presumed to be good, and a plaintiff is not required to prove his reputation, or to prove that he has suffered any actual loss or damage. Hence, there is no need for the plaintiff to prove to this court the actual reputational damages that he suffered due to the impugned posting.

[66] As narrated by His Lordship Abang Iskandar JCA (now CJSS) in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Nurul Izzah Anwar & Anor* [2018] 9 CLJ 285; [2018] 3 MLJ 726 at para [47]:

> ... A plaintiff in a defamation suit is aggrieved because the falsity of the allegation has caused adverse implications on his reputation such that damages must flow from the defendant on successful proof by the plaintiff of the alleged defamation.

[67] In *MGG Pillai* (*supra*) the appellants argued that the respondent had failed to prove the damage he suffered from the libel statement. However, the Court of Appeal held that there was no need to proof actual harm in a libel action. His Lordship Gopal Sri Ram JCA (as he then was) stated at p. 926 that:

> Libel is a tort actionable *per se*, *ie*, without proof of actual harm. In other words, damage is not an ingredient of the tort. The law presumes that when a man's reputation is assailed, some damage must result. Evidence about the extent of that damage is admissible. But evidence that purely speculates is not. That, in a gist, is the effect of the passage cited.

[68] For the avoidance of repetition, it is my finding that the gravity of the allegation posed by the defendant towards the plaintiff is severe especially his professional reputation. As confined by the English Court of Appeal in *John v. MGN Ltd* [1997] QB 586 at 607:

> In assessing the appropriate damages for injury to reputation the most important factor is the gravity of the libel; *the more closely it touches the plaintiff's personal integrity, professional reputation, honour, courage, loyalty and the core attributes of his personality, the more serious it is likely to be*.
>
> (emphasis added)

[69] On that account, the allegations conveyed in the impugned posting (even without the additional wordings) including the accusation of 'bribery' are to my mind a grave and degrading accusation and undeniably touches the plaintiff's integrity, credibility, and personal and professional reputation. Such reputational damages would undoubtably causes detriment to the plaintiff's dealings locally and internationally.

[70] Another matter this court need to consider is the extent of publication. Here, I agree with the plaintiff's submission that the impugned posting can be presumed to have reached a large audience. This is because the DG chat group has approximately 200 participants and consists of the defendant's business friends. SD1 affirmed this during his cross-examination:

[NOP, Part C p. 38]

RM Kamu adalah salah seorang dari 200 lebih peserta dalam DG WhatsApp chat group tersebut. Kamu setuju?

NATARAJ Ya

[71] Hence, it is safe to say that this is not a 'limited' publication as submitted by the defendant by relying on the case of *Tan Sri David Chiu Tat-Cheong v. Seema Elizabeth Isoy* [2021] 1 LNS 1162; [2021] MLJU 1426 where the impugned text was not widely exploited as it was only restricted to about 55 participants in a private WhatsApp group. However, unlike *Tan Sri David Chiu Tat* (*supra*), the defendant had posted the impugned posting to a WhatsApp group with over 200 participants. That is far cry from 55 participants in *Tan Sri David Chiu Tat* (*supra*). In his submission, the defendant had the audacity to say that the plaintiff brought the private publication into the public eye when he brought this claim. The defendant could not be more wrong. If such allegations and excuses were to be accepted, all plaintiffs in any defamation cases would be without any recourses and must sit idle and suffer in silent and never react to any defamatory statements made against them!

[72] As expressly admitted by the defendant, he is the creator of the impugned posting which includes the 'private' conversation between him and the plaintiff to the DG chat group. Not the other way round. His thoughtless and irresponsible action resulted in this claim being brought against him. Therefore, it is not for the defendant to shift the blame to the plaintiff now.

Conclusion

[73] To sum up, this court find that the plaintiff has proven that the impugned posting is defamatory against him. Even if this court were to expunge the additional wordings from the impugned posting, the fact remains that by reading the messages exchange of the parties there are defamatory words, meaning and phrases in them. The defendant has admitted in putting all these exchanges in the collage and published it. Although he tried to deny that publishing it in the DG WhatsApp group, the group administrator has confirmed this. Thus, the plaintiff has established his case on the balance of probabilities. Based on the aforesaid reasons, it is my order that judgment is hereby entered against the defendant for the following:

(i) global damages of RM200,000 to be paid by the defendant to the plaintiff;

(ii) interest on damages awarded at the rate of 5% per annum from the date of judgment to the date of full settlement;

(iii) a full and unequivocal written public retraction and apology to be published by the defendant in The Star in both its print and online editions within 14 days from the date of judgment on terms to be approved by the plaintiff beforehand;

A (iv) an injunction to restrain the defendant, whether by himself, his servants, associates, agents, and/or his representatives from further writing, producing, posting and/or publishing and/or writing, causing to be produced, posed and/or published or otherwise procuring to be written, producing, posting and/or publishing the impugned posting containing
B the words complained or other words similar in meaning defamatory of the plaintiff; and

(v) costs.

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